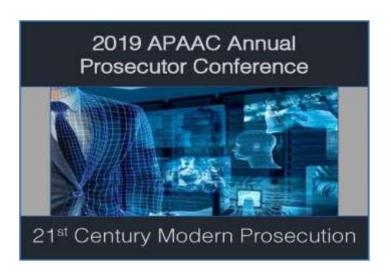
2019 APAAC Annual Prosecutor Conference June 19-21, 2019 Arizona Grand Resort & Spa Phoenix, Arizona



Privacy in the 21st Century: How Reasonable is it?

Presented By:

JON ELIASON

Deputy Maricopa County Attorney

X

DAN STRANGE

Deputy Maricopa County Attorney

Distributed by:

Arizona Prosecuting Attorneys' Advisory Council 1951 West Camelback Road, Suite 202 Phoenix, Arizona

ELIZABETH BURTON ORTIZ EXECUTIVE DIRECTOR

Fourth Amendment Privacy Outline

Supreme Court

- I. Olmstead v. United States, 277 U.S. 438 (1928)
- II. Silverman v. United States, 365 U.S. 505 (1961)
- III. Katz v. United States, 389 U.S. 347 (1967)
- IV. United States v. Miller, 425 U.S. 435 (1976)
- V. Smith v. Maryland, 442 U.S. 735 (1979)
- VI. United States v. Knotts, 460 U.S. 276 (1983)
- VII. United States v. Karo, 468 U.S. 705 (1984)
- VIII. *Kyllo v. United States*, 533 U.S. 27 (2001)
- IX. United States v. Jones, 565 U.S. 400 (2012)
- X. Riley v. California, 573 U.S. 373 (2014)
- XI. State v. Jean, 243 Ariz. 331 (2018)
- XII. Carpenter v. United States, 138 S.Ct. 2206 (2018)

• Olmstead v. United States, 277 U.S. 438 (1928)

o Facts:

- Olmstead et al. were suspected of illegally importing alcohol during Prohibition. To prove this, the government tapped into the phones in Olmstead's and the other defendants' houses and office.
- The wires were placed without trespass upon any property of the defendant. The taps in the office were made in the basement of the office building. The taps from the house lines were made in the streets near the houses.
- The government listened to the conversations, took notes and were able to gather enough evidence to convict Olmstead.
- The appellate court affirmed the conviction and the defendants sought certiorari review.

o Issue:

Whether the use of evidence of private telephone conversations between the defendants and others, intercepted by means of wiretapping, amounted to a violation of the Fourth and Fifth Amendment.

- Majority opinion by Chief Justice Taft 5-4 decision for United States.
- Regarding the Fifth Amendment, the Court held there was no room for applying the Fifth Amendment unless the Fourth Amendment was first violated. There was no evidence of compulsion to induce the defendants to talk over their many telephones. They were continually and voluntarily transacting business without knowledge of the interception.
- Regarding the Fourth Amendment, the Court held that the wiretapping of telephone conversations did not amount to a search or seizure within the meaning of the Fourth Amendment.
- "The well-known historical purpose of the Fourth Amendment, directed against general warrants and writs of assistance, was to prevent the use of governmental force to search a man's house, his person, his papers, and his effects, and to prevent their seizure against his will."
- "There was no searching. There was no seizure. The evidence was secured by the use of the sense of hearing and that only. There was no entry of the houses or offices of the defendants."
- Telephones allow individuals to speak to each other from all corners of the country and the world. It cannot be said that a person has a

reasonable expectation of privacy from his home or office to each part of the world that telephone wires may take his conversation.

o Dissent:

- Mr. Justice Brandeis, Mr. Justice Holmes, Mr. Justice Butler, and Mr. Justice Stone dissented.
- Justice Brandeis indicated that as time and technologies advance, the Fourth Amendment must adapt to the times to protect citizens' privacy rights. If you tap into the line of one individual, you inherently tap into the line of every other individual that he calls.
- Justice Holmes indicated that if decisions are confined to precedent and logic, the reason for excluding evidence obtained by violating the Constitution seems to logically lead to excluding evidence obtained by a crime of the officers of the law.
- Justice Butler indicated that wiretapping involves interferences with the wire while being used. Tapping the wires and listening in by the officers constituted a search for evidence.

• Silverman v. United States, 365 U.S. 505 (1961)

o Facts:

- In the spring of 1958, the police suspected that the defendant's premises were being used as a headquarters for a gambling operation.
- The police gained permission from the owner of the vacant lot adjoining row house to use it as an observation post.
- The officer then installed a "spike mike" to listen to what was going on at the house next door.
- The "spike mike" was a microphone with a spike about a foot long attached to it, attached with an amplifier, a power pack, and earphones. It was inserted under a baseboard in a second-floor room of the vacant house, into a crevice in the party wall, until it contacted a heating duct that served the house occupied by defendants.
- At trial, the police were permitted to describe incriminating conversations engaged in by defendants. On appeal, the court reversed the convictions, holding that defendants" Fourth Amendment rights were violated because the eaves dropping was accomplished by means of an unauthorized physical penetration into the premises occupied by defendants.

o Opinion:

- Majority opinion by Justice Potter Stewart, Unanimous decision for Silverman.
- The court held that although the "spike mike" touching the heating duct was a minor intrusion, the court found that it still constituted an actual intrusion into a constitutionally protected area.
- The eavesdropping was accomplished by means of an unauthorized physical penetration into the premises occupied by the defendants.
- Justice Douglas (concurrence) the concern should not be with the trivialities of the local law of trespass, but rather it should be with whether the privacy of the home was invaded.

• Katz v. United States, 389 U.S. 347 (1967)

o Facts:

- Katz was convicted of violating federal gambling laws.
- The Government was permitted at trial, over Katz's objections, to introduce evidence recordings of the petitioner's end of telephone conversation.
- The recordings were obtained after FBI agents who had attached an electronic listening and recording device to the outside of the public telephone booth from which Katz had placed his calls.

o Issue:

Does the unwarranted wire-tapping of a public phone booth constitute a search and seizure under the Fourth Amendment?

- Majority opinion by Justice Potter Stewart, 7-1 decision for Katz.
- The Court held even when there is no physical invasion, wiretapping a public phone booth is a Fourth Amendment search and seizure.
- What a person seeks to preserve as private, even in an area accessible to the public may be constitutionally protected.
- Katz was justified in assuming that his phone conversation would remain private, even though the phone booth is at all other times for public use.
- Katz was protected under the Fourth Amendment when he entered the phone booth and shut the door.
- Justice Harlan (concurrence)- The Fourth Amendment protects a person from unreasonable searches and seizures when he or she has a

subjective expectation of privacy that society deems as reasonable.

• *United States v. Miller*, 425 U.S. 435 (1976)

o Facts:

- Miller was charged of carrying alcohol distilling equipment and whiskey on which liquor tax had not been paid. The Bureau of Alcohol, Tobacco, and Firearms (ATF) issued subpoenas to two of Miller's banks: The Citizens and Southern National Bank or Warner Robins and the Bank or Byron.
- They requested records of Miller's accounts from both banks. The two banks complied with the subpoenas, and the evidence was used during Miller's trial in the United States District Court for the Middle District of Georgia.
- Miller was convicted and appealed his conviction alleging that his Fourth Amendment rights were violated.

o Opinion:

- Majority opinion by Lewis F. Powell, Jr. 7-2 decision for United States.
- The Court reversed the Fifth Circuit and held that Miller had no right to privacy in his bank records. Justice Burger, Steward, White, Blackmun, Rehnquist, and Stevens all join Justice Powell in the majority.
- The "documents subpoenaed are not Miller's private papers," but instead, part of the bank's business records.
- Consistent with the case *Hoffa v. United States*, Miller's rights were not violated when a third party his bank transmitted information that he entrusted them with to the government.
- Justice Brennan dissented, and was joined by Justice Marshall.

• Smith v. Maryland, 442 U.S. 735 (1979)

o Facts:

- On March 5, 1976, Patricia McDonough was robbed in Baltimore Maryland. She was able to give the police a description of the robber and the 1975 Monte Carlo she thought the robber was driving. Within a few days, she began receiving threatening phone calls that culminated
- in the caller telling her to stand on her porch, from where she observed the same Monte Carlo drive past her home.

- On March 16, the police observed the car in McDonough's neighborhood. By running a search on the license plate number, the police learned that the car was registered to Michael Lee Smith.
- The police contacted the telephone company and requested that a pen register, a device that only records numbers dialed, recorded the numbers dialed from Smith's phone to McDonough's home. Police then obtained a warrant to search Smith's house.
- On March 17, the pen register recorded a call from Smith's house. During the search, police discovered a phone book with the corner turned down on the page on which McDonough's name was found. Smith was arrested and placed in a line-up where McDonough identified her as the man who robbed her.
- In pretrial, Smith filed a motion to suppress the information derived from the installation of the pen register because it was obtained without a warrant. The trial court denied the motion, Smith waived a jury, and the case was submitted to the court with an agreed upon statement of facts.
- Smith appealed to the Maryland Court of Special Appeals, but the Court of Appeals intervened by issuing a writ of certiorari. That court affirmed the conviction and held that there was no expectation of privacy to cover the numbers dialed into a telephone system, so there was no Fourth Amendment Violation of the warrant requirement.

Opinion:

- 5-3 Decision; Majority Opinion by Harry A. Blackmun. Majority included Burger, White, Blackmun, Rehnquist, and Stevens.
- The Court held that the Fourth Amendment protections are only relevant if the individual believes that the government has infringed on a justifiable / reasonable / realistic expectation of privacy.
- This reasonable expectation of privacy does not apply to the numbers recorded by a pen register because those numbers are used in the regular conduct of the company's business, a fact of which the individuals are aware.
- Because the Fourth Amendment does not apply to the information that is voluntarily given to third parties, the telephone numbers that are regularly and voluntarily provided to telephone companies by the customers do not gain Fourth Amendment protections.

- Justice Potter Stewart, with whom Mr. Justice Brennan joins, dissenting. Argued that a person who uses a telephone has a reasonable expectation of privacy regarding the content of call. Because the telephone numbers dialed also contain information relating to the content of the call, that information is also protected by the Fourth Amendment.
- In his separate dissent, Justice Thurgood Marshall, joined by Justice Brennan, argued that the majority opinion's analysis depends on individual choice to voluntarily turn over information, but that choice is not valid if no practical alternative exists.
- Justice Powell took no part in the consideration of decision of this case.

• United States v. Knotts, 460 U.S. 276 (1983)

o Facts:

- Agents in Minnesota installed a beeper inside a five-gallon container of chloroform and arranged to have it sold to a co-defendant. After the sale, police tracked the container, visually and with the use of the beeper, as it was transferred to the car of a third co-defendant and transported to Wisconsin. Once driver made evasive maneuvers, agents stopped visual surveillance and shortly after lost the beeper. One hour later approximate location of beeper was found at Knotts' cabin. After three days of surveillance Agents executed a search warrant and found a drug lab. The five-gallon container was located outside the cabin under a barrel.
- Knotts and two co-defendants were charged with conspiracy to manufacture controlled substances, including but not limited to methamphetamine.
- Knotts' motion to suppress evidence based on the warrantless monitoring of the beeper was denied. Divided panel of the Eighth Circuit reversed the conviction, finding that the monitoring of the beeper was prohibited by the Fourth Amendment.

- Majority opinion by Rehnquist
- The surveillance conducted by means of the beeper amounted principally to the following of an automobile on public streets and highways and "[a] person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his

- movements from one place to another."
- "[N]o such expectation of privacy extended to the visual observation of Petschen's automobile arriving on his premises after leaving a public highway, nor to movements of objects such as the drum of chloroform outside the cabin in the 'open fields.'"
- Visual surveillance from public places is allowed. The fact that agents also used the beeper does not alter the situation. "Nothing in the Fourth Amendment prohibited the police from augmenting the sensory faculties bestowed upon them at birth with such enhancement as science and technology afforded them in this case."
- The complaint that "scientific devices such as the beeper enabled the police to be more effective in detecting crime" is not a constitutional claim. Police efficiency does not equal unconstitutionality.
- Use of the beeper was allowed because "there is no indication that the beeper was used in any way to reveal information as to the movement of the drum within the cabin".
- Concurring opinion written by Brennan, joined by Marshall. Opines that it would have been a tougher case if Knotts had challenged installation, instead of just monitoring, of the beeper because he does not believe that *Katz*, or its progeny, have eroded the principle that physical intrusion may constitute a violation of the Fourth Amendment.
- Concurring opinion written by Blackmun, joined by Brennan, Marshall and Stevens. He disagreed with the courts "gratuitous" reference to the "open fields" doctrine and citation to *Hester v. United States*.
- Concurring opinion written by Stevens, joined by Brennan and Marshall. He did not join with the majority opinion because it contains two unnecessarily broad dicta: 1) it implies that the drum "parading in 'open fields" was "tantamount to its public display on the highways."; and 2) it "suggests that the Fourth Amendment does not inhibit 'the police from augmenting the sensory facilities bestowed upon them at birth with such enhancement as science and technology afforded them."
- "Although the augmentation in this case was unobjectionable, it by no means follows that the use of electronic detection techniques does not implicate especially sensitive concerns."

• United States v. Karo, 468 U.S. 705 (1984)

o Facts:

- In August 1980, DEA learned that defendant and accomplices had ordered 50 gallons of ether which was to be used to extract cocaine from imported clothing. Agents got a court order allowing installation and monitoring of a beeper into one of the containers.
- On August 20, 1980, agents monitored the movements of the container primarily using the beeper and confirmed the beeper information with surveillance. The container was tracked to Defendant's house and then ultimately tracked to a single locker in a commercial storage facility. Agents installed an entry tone alarm which failed, so the beeper was again used to track the container to another storage facility. The accomplices were seen removing the containers and were followed from Albuquerque to Taos using physical and electronic surveillance.
- Once the container arrived at the house in Taos, the beeper was used to confirm the container did not move. After the windows were seen open on a cold windy day, agents got a search warrant and located cocaine and laboratory equipment.
- Defendant and his accomplices were indicted for conspiring to possess cocaine with the intent to distribute it among other crimes.
- The lower courts ruled that the initial warrant to install the beeper was invalid and that the Taos seizure was the tainted fruit. Supreme Court took jurisdiction to answer, "whether a warrant was required to authorize either the installation of the beeper or its subsequent monitoring."

- Majority opinion written by White.
- Installation of the beeper did not violate the Fourth Amendment because the container was the property of the DEA and the other containers were the property of the store owner at the time the beeper was installed, so Defendant had no reasonable expectation of privacy in them.
- The mere transfer of the container with the beeper to the accomplice did not constitute a search or seizure.
- Since police used the beeper to confirm that the container was inside of the residence, a location not open to visual surveillance it was a search and it violated Defendant's justifiable interest in the privacy of the

- residence. Therefore, the warrant was invalid.
- "The Government's contention that warrantless beeper searches should be deemed reasonable is based upon its deprecation of the benefits and exaggeration of the difficulties associated with procurement of a warrant."
- "[B]y maintaining the beeper the agents verified that the ether was actually located in the Taos house and that it remained there while the warrant was sought. This information was obtained without a warrant and would therefore be inadmissible at trial against those with privacy interests in the house". That information could also invalidate the warrant if it was critical to establishing probable cause.
- Concurring opinion written by O'Connor and joined by Rehnquist. Agrees that monitoring of the beeper implicates the Fourth Amendment, but not when it is on public roads and not as to anyone who lacks ownership of, or the power the move, the container at will.
- She prefers a test that holds "[w]hen a closed container is moved by permission into a home, the homeowner and others with an expectation of privacy in the home itself surrender any expectation of privacy they might otherwise retain in the movements of the container—unless it is their container or under their dominion and control" because "the movement of a guest's closed container into another's home involves overlapping privacy interests."
- "[O]ne who lacks dominion and control over the object's location has no privacy interest invaded when that information is disclosed. It is simply not his secret that the beeper is disclosing, just as it is not his privacy that would be invaded by a search of the container whose contents he did not control."
- Opinion concurring in part and dissenting in part written by Stevens, joined by Brennan and Marshall. Holds that "the surreptitious use of a radio transmitter —whether it contains a microphone or merely a signaling device—on an individual's personal property is both a seizure and a search within the meaning of the Fourth Amendment."
- Compares placement of the beeper with the use of the spike mic in *Silverman* because it "usurps a part of the citizen's property." (i.e. their right to exclude others from the property.) So, the attachment of the beeper constituted a seizure.

Would hold that the monitoring of the beeper was a search and it began when Defendant brought it into his home, hiding it from view of the agents.

• Kyllo v. United States, 533 U.S. 27 (2001)

o Facts:

- An agent from the Department of the Interior was suspicious that Kyllo was growing marijuana in his home, which was a triplex. A thermalimaging device was used to scan the triplex to determine if the amount of heat emanating from it was consistent with the high-intensity lamps typically used for indoor marijuana growth.
- The scan showed that Kyllo's garage roof and a side wall were relatively hot compared to the rest of his home, and substantially warmer than the neighboring units.
- Based in part on the thermal imaging, a Federal Magistrate Judge issued a warrant to search Kyllo's home, where the agents found marijuana indeed growing. Kyllo was indicted on a federal drug charge and moved to suppress the evidence seized from his home but was unsuccessful.
- Kyllo entered a conditional guilty plea and the Ninth Circuit affirmed that the thermal imaging on the ground that Kyllo had shown no subjective expectation of privacy because he had made no attempt to conceal the heat from escaping his home.
- The court ruled that there was no objectively reasonable expectation of privacy because the thermal imager did not expose any intimate details of Kyllo's life, only amorphous hot spots on his home's exterior.

- 5-4 Decision for Kyllo, Majority opinion by Antonin Scalia.
- In a 5-4 Opinion delivered by Justice Antonin Scalia, joined by Souter, Thomas, Ginsburg, and Breyer, the Court held that "whereas here, the Government uses a device that is not in general public use, to explore the details of a home that would previously have been unknowable without physical intrusion, the surveillance is a 'search' and is presumptively unreasonable without a warrant."
- In dissent, Justice John Paul Stevens, joined by Chief Justice Sandra Day O'Connor and Justice Kennedy join, Justice Stevens argued that the "observations were made with a fairly primitive thermal imager that

gathered data exposed on the outside of Kyllo's home – but did not invade any constitutionally protected interest in privacy," and were thus, "information in the public domain."

• United States v. Jones, 565 U.S. 400 (2012)

o Facts:

- Defendant was suspected by the FBI of being involved in a large-scale drug trafficking operation.
- The FBI applied for a warrant that would allow them to place a GPS tracking device on Jones's vehicle to track his movements.
- The warrant was issued, but the GPS device had to be placed on Jones's vehicle within 10 days of issuance of the warrant, while the vehicle was physically located in the District of Columbia.
- The GPS device was placed on the vehicle on the 11th day and while the vehicle was parked in a lot in Maryland.
- The Government tracked Jones's movement for 28 days, collecting more than 2,000 pages of data.
- Prior to trial, defense counsel filed a motion to suppress the information the Government obtained from the GPS device. The district court granted the motion in part and suppressed only the data obtained while the vehicle was parked in a garage adjoining Jones's residence. The court of appeals reversed and held the warrantless use of the GPS device violated the Fourth Amendment. The US Supreme Court granted certiorari.

o Issue:

Does the warrantless placement of a GPS tracking device on the undercarriage of an individual's vehicle in order to track the person's movements on public streets constitute an unlawful search in violation of the Fourth Amendment?

Opinion:

- Majority opinion by Justice Scalia, joined by Justice Roberts, Justice Kennedy, Justice Thomas and Justice Sotomayor.
- installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a search.
- The holding is based on the physical occupation of private property for the purpose of obtaining information.

- A reasonable expectation of privacy is an expectation "that has a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society".
- In making the decision, the Court applies not only the approach articulated in Katz, namely a person's reasonable expectation of privacy, but also incorporates the property-based trespass test articulated earlier.
- Justice Sotomayor (concurrence)- indicates the majority unnecessarily took a very broad approach in reaching its decision. A narrower approach is better suited to the facts of the case.
- Whenever the Government physically intrudes personal property to gather information, a search occurs. Here, the Government did just that when it placed a GPS tracking device on Jones's car without a warrant.
- Justice Alito (concurrence, joined by Justice Ginsburg, Justice Breyer and Justice Kagan) believes the highly technical 21st-century surveillance techniques of law enforcement require a better approach. The use of GPS and similar devices make long-term monitoring relatively easy and cheap. Legislative bodies should take measures to gauge public attitudes and draw appropriate lines that don't invade any constitutionally protected interest in privacy," and were thus, "information in the public domain."

• Riley v. California, 573 U.S. 373 (2014)

o Facts of Riley:

- Riley was stopped for a traffic violation and was eventually arrested on a weapons charge. Police searched the defendant incident to an arrest and seized his smartphone from his pocket.
- The police searched the smartphone and found repeated use of a term associated with a street gang, photographs and videos.
- The items found were used as evidence at Riley's trial on shooting charges brought by the State of California.
- Riley was convicted. On appeal, the state court of appeal determined that the warrantless search was a valid search incident to arrest.

o Facts of Wurie:

• Wurie was arrested after police observed him in an apparent drug sale.

- At the police station, his cell phone was seized and found several phone calls from a contact labeled "my house".
- The police traced the number to what was suspected to be Wurie's apartment.
- The police obtained a search warrant and found drugs, a firearm, ammunition and cash.
- The district court admitted evidence found in the residence at trial, but on appeal, the federal court of appeals held that the evidence was the fruit of an illegal search of the phone.

o Issue:

• Under the Fourth Amendment, may the government conduct a warrantless search of the contents of a cell phone seized incident to an arrest absent exigent circumstances?

Opinion:

- Majority opinion by Justice Roberts, unanimous decision for Riley (and Wurie).
- The court held that police officers may not conduct a warrantless search of a cell phone incident to arrest; rather, the government must secure a warrant or demonstrate exigent circumstances.
- The search of a person incident to an arrest is a valid exception to the warrant requirement of the Fourth Amendment.
- There is no safety risk posed to an officer by a cell phone beyond a preliminary search to make sure the phone does not house a blade or other small weapon.
- Once officers have secured a cell phone, there is little risk of destruction of evidence stored on the phone.
- The search of the data on a cell phone is a major invasion of privacy due to the quality and quantity of personal information stored on cell phones.

• State v. Jean, 243 Ariz. 331 (2018)

o Facts:

- The defendant was sharing the driving of a tractor-trailer with the owner.
- While the truck was in Phoenix, DPS officers became suspicious and installed a GPS tracking device on the truck without a warrant. The officers did not know the defendant was traveling with the owner.

- DEA followed the truck to Tucson and back to Phoenix. The truck then travelled to California being tracked only by GPS.
- When it returned to Arizona two days later, it was stopped. The truck was monitored for a total of 31 hours over three days.
- A search of the trailer revealed 2,140 pounds of marijuana.
- The defendant moved to suppress the evidence stating it was a violation of the Fourth Amendment. The trial court denied the motion and Jean was found guilty of conspiracy, illegally conducting an enterprise, money laundering and transportation of marijuana in an amount over two pounds. The court of appeals affirmed.

o Issue:

Whether the Fourth Amendment rights of a defendant who is a passenger of a truck that he sometimes drove while accompanied by its owner were violated when police officers collected information from a GPS device they placed on the truck without a warrant.

- The court held that the defendant did not have a claim his Fourth Amendment rights were violated based on a trespass theory because he was not a bailee and did not otherwise have a possessory interest in the vehicle.
- Further, a passenger traveling with the owner in a private vehicle generally does not have a reasonable expectation of privacy that is invaded by the government's continually tacking the vehicle through a surreptitious GPS tracking device.
- GPS monitoring involves materially different technology than did the "very primitive" radio technology used decades ago in *Knotts*. Such technology allows the government to continually gather, store, and mine vast amounts of information at relatively little cost.
- Other states have also enacted laws that impose civil and criminal penalties for using electronic tracking devices and require evidence obtained by such devices to be excluded unless the government obtains the evidence through a warrant. Such case law and legislation further reflect that society deems reasonable an expectation of privacy in one's movements as concerns GPS monitoring."
- Short term v. long term GPS monitoring: "Such an ad hoc approach to determining whether GPS tracking constitutes a search would ill serve the interests protected by the Fourth Amendment. The United States

Supreme Court 'repeatedly has acknowledged the difficulties created for courts, police, and citizens by an ad hoc, case-by-case definition of Fourth Amendment standards to be applied in differing factual circumstances,' with the main difficulty being 'a danger that constitutional rights will be arbitrarily and inequitably enforced."

• Carpenter v. United States, 138 S.Ct. 2206 (2018)

o Facts:

- In April 2011, police arrested four men in connection with a series of armed robberies. One of the men confessed to the crimes and gave the FBI his cell phone number and the numbers of the other participants to the robberies.
- The FBI used this information to apply for three orders from magistrate judges to obtain "transactional records" for each of the phone numbers, which the judges granted under the Stored Communications Act, 18 U.S.C. 2703(d).
- This act provides that the government may require the disclosure of certain telecommunications records when "specific and articulable facts show that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation."
- The transactional records obtained by the government include the date and time of calls, and the approximate location where calls began and ended based on their connections to cell towers "Cell site" location information (CSLI).
- Based on the cell-site evidence, the government charged Timothy Carpenter with, among other offenses, aiding and abetting robbery that affected interstate commerce, in violation of the Hobbs Act, 18 U.S.C. 1951.
- Carpenter moved to suppress the government's cell-site evidence on Fourth Amendment grounds, arguing that the FBI needed a warrant based on probable cause to obtain the records. The district court denied the motion to suppress, and the Sixth Circuit affirmed.

o Opinions:

• 5-4 Decision for Carpenter, the government's acquisition of Carpenter's cell-site records was a 4th Amendment Search.

- Chief Justice John G. Roberts, Jr. wrote the majority opinion. The government's warrantless acquisition of Carpenter's cell-site records violated his Fourth Amendment Right against unreasonable searches and seizures.
- The Majority first acknowledged that the Fourth Amendment protects not only property interests, but also reasonable expectations of privacy. Expectations of privacy in this age of digital data do not fit neatly into existing precedents but tracking a person's movements and location through extensive cell-site records is far more intrusive than the precedents might have anticipated.
- The Court declined to extend the "third-party-doctrine" a doctrine where information disclosed to a third party carries no reasonable expectation of privacy to cell-site location information, which implicates even greater privacy concerns than GPS tracking does.
- Further, the third-party doctrine applies to voluntary exposure, and while a user might be abstractly aware that his cell phone provider keeps logs, it happens without any affirmative act on the user's part. Thus, the Court held narrowly that the government generally will need a warrant to access cell-site location information.
- Justice Anthony Kennedy filed a dissenting opinion, Thomas and Alito joined. Justice Kennedy would find that cell-site records are no different from the many other kinds of business records the government has lawful right to obtain by compulsory processes.
- Justice Thomas filed a separate dissenting opinion, emphasizing the property-based approach to Forth Amendment questions. In Justice Thomas' view, the case should not turn on whether a search occurred, but whose property was searched. By focusing on this latter question, Justice Thomas reasoned, the only logical conclusion would be that the information did not belong to Carpenter.
- Justice Alito also filed a separate dissenting opinion, in which Thomas joined. Justice Alito distinguishes between an actual search and an order "merely requiring a party to look through its own records and produce specified documents" with the former being far more intrusive than the latter. Justice Alito also criticizes the majority for what he characterizes as "allowing a defendant to object to the search of a third party's property," a departure from long-standing Fourth Amendment doctrine.

 Gorsuch filed dissent emphasizing "original understanding" of the Fourth Amendment.